



June 24, 2016

BY EMAIL: Frank.Taormina@state.ma.us

Mr. Frank Taormina
MassDEP Waterways Regulation Program
One Winter Street – 5th Floor
Boston, MA 02108
RE: Application to Amend Waterways License No. 4981

Dear Mr. Taormina:

Thank you for this opportunity to comment on the application by 245 and 257 Marginal Street LLC (the “Applicant”) to extend the term of Waterways License No. 4981 for an additional 10 year term pursuant to 310 CMR 9.25(2).

The Mystic River Watershed Association (MyRWA) is a 501(c)(3) non-profit organization dedicated to the preservation and enhancement of the Mystic River Watershed. The mission of MyRWA is to protect and restore the Mystic River, its tributaries, and watershed lands for the benefit of present and future generations and to celebrate the value, importance, and great beauty of these natural resources. This includes working to improve public access to the Mystic River and all of its tributaries.

Because the Applicant long ago abandoned any effort to satisfy the special conditions of the license facilitating public access at 257 Marginal Street, this application should be denied. 310 CMR 9.24(1).

The Applicant states, by letter dated April 27, 2016: “The Applicant is in compliance with the applicable waterways regulations.” That assertion is false. A cursory inspection of the site reveals that the Applicant has been grossly negligent in its stewardship for many years. Regulatory provisions that the Applicant has repeatedly and continuously violated include 310 CMR 9.35(3)(b) and (5) and 9.52. Examples of the Applicant’s noncompliance with license conditions are detailed below.

The Applicant suggests that “the site currently has some maintenance needs that are being addressed.” It is disingenuous to describe the utterly dilapidated public access facilities as having “some maintenance needs.” And there is no evidence that the Applicant is doing anything to improve the situation. Although an effort may have been made, 20 years ago, to provide public access by means of walkways under the approved design, the Applicant’s gross neglect of these minimal facilities has, for many years, warranted revocation of the license pursuant to 310 CMR 9.26(1)(a). Under these circumstances, any extension of the license term conditioned on public access requirements so obviously and persistently flouted would make a mockery of the Department’s administrative scheme to protect the public interest under M.G.L. Ch. 91.

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If the Department chooses not to summarily deny the application, it should inquire further into the Applicant's egregious noncompliance and the resulting harm to the public interest; conduct a public hearing on the merits of the application, pursuant to 310 CMR 9.13(3) and 9.24(4); and establish new license conditions that must be satisfied to ensure that the purposes of ch. 91 are fulfilled, including the submission of periodic license compliance inspection reports. MyRWA has extensive experience helping to shape the design of shoreline facilities, including those on filled tidelands, to facilitate non-water dependent use while providing adequate public benefits, in keeping with the public trust doctrine. The City of Chelsea and other local stakeholders have much to contribute in this regard.

Observed Violations of Special Conditions for Public Access

On June 23, 2016, at approximately 5:00 p.m., a volunteer with our organization inspected the Harbor Walk and associated amenities at 257 Marginal Street, Chelsea. He noted (and photographed) numerous existing conditions that are contrary to the public interest and in clear violation of special conditions of the original License ("Special Conditions," incorporated by special condition 3 of the amended license). Among these are the following:

1. The walkway facilities have not been maintained in good repair, as required by Special Condition 6(A). The westerly and easterly walkways are littered with trash and debris for their entire length and contain numerous clumps of weeds, impeding passage and creating a visual impression of neglect. The concrete slabs of the westerly plaza have heaved and cracked, creating dangerous gaps in the pavement several inches wide, blocking access to the shade structure and the single trash receptacle provided (which is marred by graffiti). Other cracks in the plaza are full of weeds. The easterly plaza is criss-crossed by tall weeds growing in the cracks between concrete slabs. The southerly walkway along the waterfront, originally of stone dust, is completely filled with weeds and impassable. Old trash is strewn about.
2. There is no hand rail or other appropriate safety measure along the waterfront, as required by Special Condition 6(A)(a). The only physical barrier between the walkway and the steep slope of stone riprap is a line of concrete blocks approximately 9 inches high, obscured by weeds. This creates a hazard to pedestrians.
3. The two entryways to the walkway facilities are distinctly unattractive and uninviting. They do not contain decorative posts or appropriate signage, as required by Special Condition 6(A)(b). Each entrance has one sign marked "Harbor Walk Open To Public" hanging on the chain link fence. No other information or guidance is provided.
4. The shade structure at the easterly plaza, required by Special Condition 6(A)(c), is encroached by weeds and in disrepair. One half of this structure has no roof panel to provide shade. The plywood roof panel for the other half is broken and dislodged from its mounts. It is suspended on one side by a makeshift strap and on the other side by one of its corners, resting unsecured on the frame of the structure. The precarious position of this heavy panel creates a deadly hazard to anyone using the bench below.
5. Several of the lighting standards required by Special Condition 6(A)(g) are broken and unusable. It is doubtful whether any of the others supply light.
6. The masonry wall along Marginal Street is in disrepair, and there are numerous weeds along the sidewalk, in violation of Special Condition 8.
7. The Applicant provides fewer than seven contiguous parking spaces, in violation of Special

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Condition 9. Two spaces stand near a sign marked "Harbor Walk Parking." It appears that at one time there were six contiguous spaces, but that a noncompliant entrance to the private parking area was then created, eliminating the two middle spaces. (This entrance is now blocked by a jersey barrier.) The middle space nearest the sign still contains a concrete island and automatic gate (not in service). The three spaces on the other side of the concrete island are physically and visually separated from the two nearest the parking sign and are clearly being used for private purposes unrelated to use of the Harbor Walk.

8. The other signage provided fails to comply with the requirements of Special Condition 12. There is one small sign on the chain link fence in the vicinity of each entryway stating "Harbor Walk Open To Public." But the entryways are disguised and rendered uninviting by the presence of a row of orange barrier posts (across the entire width of one entrance), and confusing "private property" signs, barriers, and gates. There is no signage present that contains any of the information required by the last sentence of Special Condition 12.

Our volunteer encountered a group of three persons engaged in fishing at the westerly plaza. A fourth arrived later. Apart from a small number of determined anglers, it does not appear that the Harbor Walk is used by the general public, although it may be used by vagrants. It cannot be used safely by anyone. The general impression on the visitor is that the whole area has gone to waste and would be dangerous to enter.

MyRWA is not in a position to comment on the Applicant's compliance with most of the other Special Conditions, including Special Conditions 1-5. However, it appears that the benefit provided by the non-water-dependent use of this site is much diminished compared to what was originally contemplated. The larger part of the private parking area is mostly empty, containing a few rows of new rental company vehicles, apparently waiting to be placed in service or sold. The bus shelter (located in this area) is abandoned and full of debris. There are no evident handicapped parking spaces. A relatively small portion of the site is used by vehicles in actual service.

We hope you will take the above concerns into serious consideration as you review the application before you. If you have any questions or require additional information please feel free to contact me.

Sincerely,



EkOngKar Singh Khalsa, Executive Director
Mystic River Watershed Association

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